Report of the

The Ombudsmen

for the year ended
31 March 1988

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Mr Speaker,

We have the honour to submit our report on the work of the Ombudsmen for the year ended 31 March 1988.

REPORT OF THE CHIEF OMBUDSMAN, JOHN F. ROBERTSON, C.B.E. AND THE OMBUDSMAN, NADJA TOLLEMACHE

Highlights

- The report marks a milestone in the life of the Ombudsmen's institution in New Zealand representing as it does the output of the Silver Jubilee year of its creation.
- Statistical information discloses a significant increase in workload —16.1% in Ombudsmen complaints and 40% increase in Official Information reviews (pages 7–8).
- All told the office guided and assisted nearly 4000 persons or organisations during the year, demonstrating once again the value placed on the Ombudsmen's role by the public of New Zealand (page 8).
- The Ombudsmen's experience in trying to have jurisdictional and accountability issues considered by Select Committees of the House of Representatives during the course of hearings on Bills for new structures in the government arena reveals a gap in Parliament's machinery for constitutional review of the creation of new statute law (pages 8–11).
- The Ombudsmen indicated to the Social Services Select Committee that they accepted the recommendation of the Working Party on the Children and Young Persons Bill that the role of the Ombudsmen in respect of children and young persons be enhanced and promoted. They agreed that this could be done in the existing framework of the Ombudsmen's office (page 11).
- With so many proposals for "Ombudsmen" of various types, the Ombudsmen sought and obtained approval from the Deputy Prime Minister for legislation to protect the name Ombudsman/Ombudsmen for its constitutional role and to avoid confusing the public. It is hoped this will be enacted within the next 12 months (page 12).
- The Accident Compensation Corporation's unwillingness to accept responsibility for the consequences of its mistakes became a matter of concern. The Chief Ombudsman acknowledges that this stand is taken on legal advice, but continues to believe that claimants who suffer monetary loss through the Corporation's errors should be entitled to be compensated for that loss (page 13).
- The Chief Ombudsman is particularly critical of the consequences of delay for Te Atiawa and other Taranaki iwi in the development of the Waitara sewage and wastewater project (page 14).

- The differences in scope of the Ombudsmen's jurisdiction under the Ombudsmen Act, Official Information Act and Local Government Official Information and Meetings Act are causing some public confusion. These problems were highlighted by the Ombudsman's investigation of complaints surrounding the closure of Post Offices (page 15).
- Delays by organisations in responding to Ombudsmen's requests is extending unduly the time taken to give a final reply to complainants. Under the Official Information Act 32% of requests for information by the Ombudsmen were answered on the 19th working day or later. This is not in accord with the wishes of Parliament established when the time limits were passed into legislation (pages 17–18, 20–21).
- Seventeen formal recommendations were made under the Official Information Act without the veto being applied (page 19).
- Official information requests increased in complexity during the year; traditional understandings of constitutional conventions in relation to free and frank advice to Ministers and Cabinet were positively challenged by Ombudsmen during the year and this presented difficult considerations for Ministers and officials. The response was encouraging for open government (page 22).
- The extent to which tendered period contract prices should be disclosed by the Government Stores Board was the subject of an important review (page 24).
- The Chief Ombudsman accepts full responsibility for the $18,000 overspent (1.07% of approved Vote). Given the major increase in work load it is surprising it was not higher. In any case the need for supplementary funding was obvious by September, but the Chief Ombudsman's request was denied (pages 29–30).

Introduction

After a period of some six months during which the Chief Ombudsman was the only Ombudsman, the Governor-General, on the unanimous recommendation of Parliament, appointed Nadja Tollemache as Ombudsman on 2 April 1987. Prior to this appointment Mrs Tollemache was Deputy Dean of the Auckland University Law School. In moving that the House of Representatives recommend Mrs Tollemache's appointment as an Ombudsman, the Leader of the House said:

> "It is not intended to change the title 'ombudsman' in order to accommodate the appointment. The concept and term 'ombudsman' are of Swedish derivation, and there the word applies equally to men and women who hold the position."

Mrs Tollemache took up office on 13 May 1987. Following her appointment, she assumed responsibility for all the work handled through the Auckland office and approximately half that undertaken in Wellington, the Chief Ombudsman retaining responsibility for the balance of the

work of the Wellington office and all that undertaken through the Christchurch office, as well as his administrative functions.

Since the enactment of the Official Information Act 1982, the Chief Ombudsman had assumed responsibility for all the investigations under that Act, all of which were conducted through the Wellington office. However, with the enactment of the Official Information Amendment Act 1987 which came into force on 1 April 1987, and extended the jurisdiction under that Act to area health and hospital boards, education authorities and universities, it was logical that investigations involving those organisations (with the exception of the universities) should be regionalised to reflect the practice under the Ombudsmen Act 1975. It was decided to handle all investigations involving universities through the Wellington office, at least initially, because they were not familiar with the role of Ombudsman, not being subject to the Ombudsmen Act. Devolving the Official Information Amendment Act cases to the regional offices enabled staff in Auckland and Christchurch to familiarise themselves with the principles, practices and procedures developed since 1983 so they would be ready to absorb the additional functions they would have to assume from 1 March 1988 when the Local Government Official Information and Meetings Act 1987 came into force.

As a consequence of these developments, the Chief Ombudsman no longer undertakes all the investigations under the Official Information Act. The functions under all three Acts are now shared between the Chief Ombudsman and the Ombudsman and for this reason we have decided to write a joint report.

The Silver Jubilee

In October 1987 the office celebrated its Silver Jubilee. The occasion was marked by a function hosted by the Speaker in the Legislative Council Chamber which was attended by former Ombudsmen, Parliamentarians, central and local government officials, and others with a special interest in the office. In addresses given by the Minister of Justice, the Opposition spokesperson on Justice and the Chief Ombudsman, tribute was paid to those who have held the office of Ombudsman, and comments were made on the developments which have occurred over the years and which can be expected to occur in the next twenty five years. Massey University also decided to make a videotape about the first twenty five years of the office and although the production was not completed in time to be launched in 1987, it has now been completed and is ready to go to air.

THE WORK OF THE OFFICE

The workload

The intake of complaints during the reporting year has continued to grow as shown in the statistical tables at pages 33–39 .

Ombudsmen Act

There was a 16.1% increase in the number of complaints received under the Ombudsmen Act (2030 this year, 1747 last). 671 complaints were fully investigated of which 265 (39.5%) were either resolved or sustained. In addition, a further 48 complaints were resolved by informal enquiry. Although the number of complaints fully investigated appears small in relation to the total number of cases disposed of —1869—this does not reflect the time and effort in disposing of the balance. A considerable amount of research is involved in responding to complainants whose grievances are outside jurisdiction because it is the practice to try to offer as full advice as possible as to alternative remedies which may be available to the complainants. Similarly, research of the relevant law and existing administrative practices is also involved with those complaints which, while within jurisdiction, are ultimately declined because there is an alternative remedy available to which the complainants could reasonably resort. Finally, in those cases where no formal investigation is undertaken but advice or assistance is given, the responses entail explaining the law, practice and procedure on the basis of previous investigations and research to enable the complainant to understand the reasons why a particular decision has been made or action taken. 559 complaints were still under investigation at the end of the reporting year.

Official Information Act and Local Government Official Information and Meetings Act

There was a 40% increase in the number of review requests received under the Official Information Act (445 this year, 318 last). In addition six requests were received under the Local Government Official Information and Meetings Act. Together with cases carried forward from last year a total of 562 requests were under review in the course of the year. 320 of those were fully investigated of which 211 (66%) were either resolved or sustained. A further 32 requests were resolved without the need for a formal investigation. The balance of the requests were either declined as being outside jurisdiction or under one of the other discretionary powers. Alternatively, formal investigations were not undertaken, the complainants being given advice and guidance along similar lines to the advice and guidance given to complainants under the Ombudsmen Act. 150 requests were still under review at the end of the reporting year.

The increase in complaints under the Official Information Act was anticipated because of the amendment referred to above. The impact of the Local Government Official Information and Meetings Act 1987 on the work for the year under review was minimal given that the legislation did not come into force until 1 March 1988, but an increase in the workload of the three offices can be expected in the coming year.

Statistics—General Comment

As noted last year, the statistics published by this office since inception do not reflect the full workload undertaken by the office. They do not

take account of a considerable number of cases which are reopened, for example, where an Ombudsman has declined to investigate a complaint, usually where the complainant has not exhausted alternative administrative remedies available, and where, having resorted to those remedies without success, the complainant refers the matter back to the Ombudsman for investigation.

Failure to include the first investigation and action in the statistics is wrong because each case is considered thoroughly before being disposed of by an Ombudsman as a formal complaint. Fresh action is required if the complainant comes back again either with the same complaint, which this time is accepted because all preconditions have been met, or with a revised complaint which is within jurisdiction. Some 442 complaints which were disposed of initially and later referred back to the Ombudsman are not recorded in the statistics. As from 1 April 1988 such complaints will be included in the statistics.

Taking into account the 2030 complaints recorded in the statistics, plus the 442 not recorded, it is evident that each of us has to complete on average a total of 103 complaints per month to keep abreast of demand. In fact we completed, on average, 93 per month and that is the reason why the backlog of cases on hand at the end of the year rose from 480 on 31 March 1987 to 709 on 31 March 1988. This increased backlog does not arise from the inability of investigating staff or Ombudsmen to deal with the numbers received. The problem is a result of increased complexity, and tardiness on the part of organisations in responding to Ombudsmen's requests for reports and information. We will be working on this problem during the next year, but it can be seen that the processing targets required, plus all the other demands on Ombudsmen's time detailed elsewhere in the report, place a constant and significant workload on us, and our investigating staff.

In addition to the formal complaints, all three offices handle enquiries by telephone interview and correspondence. These total in excess of 1000 contacts and many of them are time consuming. The time taken for personal interviews is very demanding, particularly where the inquirer is distressed by some event, and time and patience are required to create a climate where the person can be helped effectively.

Given the corrected figure of 2472 formal complaints, over 1000 informal contacts, and over 200 contacts at clinics, the office guided and assisted around 4000 persons or organisations during the year. While this throughput of business certainly placed a heavy burden on Ombudsmen and staff, it demonstrates the effective role we can and do play within the community, which is rewarding for us.

LEGISLATIVE AND PARLIAMENTARY ISSUES

1. Accountability and Jurisdiction

Over the past four years the traditional machinery of government has undergone major changes which have altered that machinery significantly, including the processes by which Parliament has held the Executive accountable for its activities. As a consequence, the Ombudsmen,

who have for the past twenty five years been one of the parliamentary processes of accountability, have been concerned to ensure that, notwithstanding the changes, an effective system of checks and balances is maintained.

"Accountability" is not just a new "buzz word" in our vocabulary. It is an essential characteristic of our democracy and while much painful administrative reform has been done in its name, which has resulted in overuse of the term, this has more to do with the arguments the executive has advanced as it guides a nation under pressure economically, socially and geographically, through the process of change, than it has with the public's perception of the term.

Democracy in New Zealand has developed quite differently from its Westminster prototype. New Zealand has no written enforceable constitution, no Bill of Rights, no second chamber, and we have a "first past the post" system of choosing a government which then has a majority power to govern for three years. When the checks and balances usually associated with the Westminister prototype do not exist, significant reliance has to be placed on administrative law and the observance of potentially fragile constitutional conventions, one of which must be that people will be given an opportunity to express their views on the activities of government which affect them and, more importantly, that their views will be taken into account in the decision-making process. That is what the call for accountability in our society today is all about and it is this aspect of accountability which we, as Ombudsmen, see it as our duty to support.

We would not normally consider it appropriate to recommend which organisations should or should not be subject to our jurisdiction as that is a matter for Parliament to determine. However, as there appears to be no systematic approach to the question of accountability, and, indeed, inconsistency in the application of the provisions of the Ombudsmen Act and the Official Information Act in terms of our part in the accountability process, we have taken the rather unusual step of advocacy before Select Committees of the House.

This unusual step was taken in part because the general test for the application of the Ombudsmen Act—the so-called Hanan principle—which was the basis for the original Ombudsman philosophy: "that if the organisation was perceived as being a government organisation by the public it should be subject to jurisdiction", seemed to be losing ground.

Secondly, it was not apparent that existing recent legislation or the new legislation being drafted took account of the relevant criteria or guidelines for Ombudsmen Act and Official Information Act jurisdictions contained in the report by the Legislation Advisory Committee of August 1987 on "Legislative Change". Inconsistency was apparent and new legislation was adding to that inconsistency. The banking organisations provide a good example of this. The Reserve Bank is subject to the Official Information Act but not the Ombudsmen Act. Post Office Bank Limited is subject to both Acts. The Bank of New Zealand (with minority

shareholding without voting rights) is subject to neither, DFC New Zealand Limited in its present form is subject to the Official Information Act only, and the Rural Banking and Finance Corporation is currently subject to both Acts.

Thirdly, we observed an interesting exchange about Ministerial responsibility for State-owned enterprises which took place in Parliament last year. The Order Paper for 14 October 1987 contained a question (No.87) from the Hon. G F Gair and an answer from the Rt Hon. Geoffrey Palmer on the accountability of State-owned enterprises. In his answer, the Deputy Prime Minister indicated that Ministers will be answerable for specific powers conferred on them by the Act, mainly the broad guidelines within which the enterprises operate, while Boards of Directors would be answerable for day to day operations within the framework of approved policy. The Speaker subsequently ruled, however, that questions on the day to day operations of State-owned enterprises may continue to be put to Ministers in the House.

It is the grievances that arise from the day to day operations of the State-owned enterprises that are brought to the Ombudsmen for resolution. It is in this area that the State-owned enterprises impact on customers and the public and affect the rights and lives of people, particularly where monopoly operations are concerned. While it is difficult for a Minister, given the structure of the State-owned enterprises, to be accountable in this context even if required to answer a question in the House, supportive means of operating that accountability are available to Parliament through the Ombudsmen's role in the Ombudsmen Act and Official Information Act jurisdictions.

The position which we describe brought the realisation that there was a need for us to advocate a consistent approach to the two jurisdictions when new forms of State owned organisations are being proposed. We believe our experience is evidence that there is a quite serious gap in Parliament's machinery for constitutional review of the creation of new statute law. The need for attention to the preservation and strengthening of constitutional conventions and the processes of accountability often takes second place to the dynamics which emerge in the functional environment of new legislation, and the strategies of its presentation by the Government and its criticism by the Opposition. This is particularly so in periods of significant change in the machinery and structure of Government, such as that currently being experienced. These important constitutional issues should not go by default or rely on patching up propositions from those like Ombudsmen, who are only one of a number of Parliamentary Officers involved with accountability at the periphery of administration. These matters need attention in an organised way during the genesis of legislation and we strongly urge Parliament to seek ways and means of achieving this.

2. **Submissions on Bills**

We made submissions on the following Bills:

— Development Finance Corporation of New Zealand Amendment No. 2 Bill
— Rural Banking and Finance Corporation of New Zealand Bill
— Ports Reform Bill

We pointed to the changes being made to the form in which government business is transacted and the need for criteria to be devised and adopted, establishing mechanisms for accountability which would be applied consistently to the new organisations.

These submissions were consistent with the guidelines on the relevance of the Ombudsmen Act and the Official Information Act set out in the Legislation Advisory Committee's report. As the Bills had not been reported back before 31 March 1988, we cannot indicate the extent to which Parliament, through the Select Committee process, has taken notice of our submissions. Because of the importance of these constitutional issues to the public of New Zealand we earnestly hope that some consistent approach will be taken.

In the case of a number of other Bills, it was decided to follow the advice of the Deputy Prime Minister that where new legislation contained proposals establishing new governmental bodies, and the question of whether or not those bodies should be subject to the Ombudsmen's jurisdiction appeared to have been overlooked, the Ombudsmen should make representations to the Minister responsible for the particular legislation. Such representations were made in respect of the following Bills:

— New Zealand Nuclear Free Zone, Disarmament, and Arms Control Bill
— Social Security Amendment Bill
— Auckland Airport Bill

3. **Children's Ombudsman**

At the request of the Social Services Select Committee we made submissions on the Report of the Departmental Working Party on the Children and Young Persons Bill. The working party had recommended, among other things, that the role of the Ombudsmen under the Ombudsmen Act

> "be enhanced by improving access for children and young persons and those pursuing their interests. Measures could include the establishment of a children's Ombudsman and the active promotion of the role . . ."

We supported the working party's recommendation, pointing out that the legal framework is already in place to enable children and young persons to have grievances involving central and local government departments and organisations investigated by the Ombudsmen, and that what was required was the establishment within the existing office structure of specific procedures to ensure that children and young persons have effective access to the Ombudsman. This could be achieved by the appointment of a specialist investigating officer who would be

responsible to the relevant Ombudsman for investigating complaints involving children, monitoring government agencies and institutions that deal with children, and conducting public education and public relations programmes to make the general public, and children in particular, aware of the Ombudsmen's role in respect of children. The provision in section 13(3) of the Ombudsmen Act 1975 enabling an Ombudsman to initiate an investigation on his or her own motion was seen as particularly useful in relation to complaints involving children.

It is interesting to note that during 1987 the British Columbian Ombudsman appointed a specialist investigating officer for children's complaints. This follows an earlier and similar appointment in Manitoba.

4. **Planning Ombudsman**

We also commented on the report prepared by Mr A Hearn, QC to the Chairman of the Ad Hoc Ministerial Committee on the Town and Country Planning Act. The report proposed the establishment of a "Planning Ombudsman" but overlooked the functions which the Ombudsmen already fulfil in relation to the particular issues the report envisaged the "Planning Ombudsman" would address. We drew attention to this and to one problem which our experience had highlighted, namely, the situation where a local authority approves a planning application as conforming with the district scheme, but the adjoining property owners consider the proposal to be non-conforming and to affect adversely their enjoyment of their property.

In such situations the affected property owners have no review and appeal procedures available, although they can bring a case to the Ombudsman. However, until an investigation has been conducted, an Ombudsman cannot form an opinion on the merits of the complaint and Councils are, understandably, reluctant to withhold issuing a permit pending the outcome of the Ombudsman's investigation because they may later face claims for damages resulting from that delay. By the time an Ombudsman has investigated the matter, should he or she sustain the complaint, it is frequently too late to provide an effective remedy. We suggested that a procedure be introduced requiring parties whose property may be affected by an application, even a conforming one, to be notified of a proposal before it is approved and given an opportunity to comment on it. Any problems could thus be thoroughly examined before Council makes a decision.

5. **Protection of the Term "Ombudsman/men"**

We have for some time been concerned at the proliferation in the use of the term "Ombudsman" or "Ombudsmen" both overseas and within New Zealand when referring to various consumer protection or grievance mechanisms being contemplated in both the private and the public sector. We have also heard from our overseas colleagues, including the Swedes, as to the confusion it causes. While supportive of the objectives of the various proposals, which are clearly to assist the public to solve grievances as they arise, the role to be undertaken by the

incumbents of the various positions is not that of an Ombudsman appointed by Parliament for the classical function of taking complaints against the administrative acts of government organisations, or for the more recent functions in official information activities.

The term "Ombudsman" has become accepted and understood in New Zealand as being synonymous with a constitutional right of a person to have a grievance against executive government, whether central, regional or local, investigated or to have a decision not to release information reviewed. If others use the term "Ombudsman" it will inevitably lead to confusion in the minds of the public as to what an Ombudsman is and does as a complaints authority of the last resort, and that will undermine the effectiveness and integrity of the existing constitutional process. After referring the matter to the Deputy Prime Minister, he agreed that legislative provision should be made to protect the name and undertook to include appropriate provision in either the Statutes Amendment Bill or the Law Reform (Miscellaneous Provisions) Bill this year. We look forward to the passing of this legislation in the coming year.

ISSUES ARISING FROM INVESTIGATIONS UNDER THE OMBUDSMEN ACT

1. Accident Compensation Corporation's unwillingness to accept responsibility for its mistakes

Two investigations during the past year have drawn the Chief Ombudsman's attention to the Accident Compensation Corporation's attitude towards requests for payment of interest or compensation calculated by reference to interest rates where a payment has been delayed by some fault on the part of the Corporation. In one case the Corporation, having assessed lump sum compensation due to a claimant, did not pay it to him, despite his enquiries, until some four years later and then only after he had engaged solicitors to act for him. In the other case, the Corporation had assessed lump sum compensation due to a minor, but had failed (after indicating it would do so) to invest it in a trust fund on her behalf so that when, six years later, she came of age and applied for payment of the sums due to her, she received only the original assessment. If properly invested this could have doubled or trebled over the years.

The fundamental issue raised by both cases was whether an organisation should accept responsibility for its mistakes and remedy them. The Chief Ombudsman believes that organisations should face up to their mistakes and remedy the impact of their deficiencies. The Corporation, on the other hand, has taken the view, with the support of senior counsel, that the Accident Compensation Act does not give it the power to make payments in the nature of interest. Although the Chief Ombudsman had to accept that the Corporation was entitled to rely on the advice it had received on the matter, he continued to believe that claimants who had suffered a monetary loss through the Corporation's

errors should be entitled to be compensated for that loss, particularly when regard is had to the specific functions of the Corporation.

Accordingly, he referred the matter to the Law Commission which was studying the operations of the Accident Compensation Act with a recommendation that appropriate provisions be included in any amendment to the Act, which will ensure that the Corporation has the authority to provide an adequate remedy for complainants who suffer a monetary loss as a result of an error or omission on the part of the Corporation.

2. Waitara Sewage and Wastewater Proposals—Problems of Te Atiawa and other Iwi

The Chief Ombudsman received representations from the Te Atiawa tribe concerning the inordinate delays experienced by it in having a recommendation made by the Waitangi Tribunal in March 1983 implemented. In July 1983 the Government had established a Task Force to report on the Third Recommendation of the Tribunal concerning the impact of marine pollution on the traditional fishing grounds of Te Atiawa. The Task Force did not report back until October 1986. The reason for this delay can no doubt be explained, but the time taken, given the nature of the problem, is difficult to justify. During the course of the Task Force's project there had been a change of Government. The new Government considered the report through its Cabinet Development and Marketing Committee which authorised officials to produce specific proposals and funding recommendations. Central to achieving this position was an agreement between the Crown and the North Taranaki District Council (acting on behalf of the pipeline users) on a long outfall, its cost, and other associated issues.

When the Chief Ombudsman first considered the complaint he identified the following points of concern:

(i) the continuing delays in achieving the clearly stated intentions of the Waitangi Tribunal, the implementation of which two Governments had agreed should be investigated;

(ii) the apparent failure of both Crown officials and those of the North Taranaki District Council to take control and ensure progress with the heads of agreement;

(iii) the apparent absence of formal reports from officials to the Cabinet Committee notifying the delays, thus denying Ministers the opportunity to issue instructions on the priorities to be accorded;

(iv) the failure of the officials to establish an action plan defining critical target objectives, dates, etc for the implementation of the project;

(v) the failure to accord Te Atiawa a special place in discussions which had taken place and to consult them and keep them advised of progress or, more relevantly, lack of progress and the reasons.

In an endeavour to achieve some progress, the Chief Ombudsman conferred with his colleague, the Parliamentary Commissioner for the Environment, who was already involved because of the environmental issues. They had a series of meetings with the Chairman of the District Council, the Secretary of Energy and the Secretary for the Environment. These resulted in some new resolve to progress matters at a faster pace. Some better planning was done and accountability for actions to be taken appeared to receive more mature and urgent attention.

However, at the end of the reporting year, there is no progress to report. Agreement between the Crown and the pipeline users has still not been achieved —an eighth draft is under consideration! Until it is completed, the necessary management committee cannot be set up to manage the project, and the Government cannot give the necessary financial authorisations for implementation of the scheme to proceed, and for water rights to be applied for and approved. This latter point is crucial to Te Atiawa because the level of water purity, and where it is discharged into the sea, are of extreme importance to their rights to traditional shell fish and fishing resources in the area. In the meantime, a totally inadequate disposal scheme exists which is a danger to public health, insensitive to Maori values, and deteriorating in efficiency daily. Its current water right expires in December 1988 and, at best, the new scheme still appears to be three to four years away.

The inability to achieve any measurable result made the Chief Ombudsman understand the frustrations felt by Te Atiawa and by other iwi. It only serves to confirm to the tangata whenua that officialdom is insensitive to their values and needs. This fuels unnecessary polarisation of our society. Although reasons have been given for the time taken so far, the sum total of the delays which have occurred and which continue to occur in achieving a result, render all arguments rationalising them untenable.

Having regard to the situation disclosed in the course of the Chief Ombudsman's enquiries, he has decided that the most effective action he can take is to draw Parliament's attention to the unsatisfactory progress to date in implementing a recommendation of the Waitangi Tribunal which has been recognised by two successive Governments as being worthy of implementation. He therefore strongly recommends that the House of Representatives refer the issue and his comments on it to an appropriate Select Committee so that progress towards resolving the problem, which has potentially serious implications not only with regard to the spirit of the Treaty of Waitangi and Maori values and expectations, but also for the public health and environment of the local region, can be monitored by Parliament and a result achieved in a more timely way.

3. **Post Office Closures**

Early in 1988 a number of complaints were received under the Ombudsmen Act relating to the decision to close certain Post Offices throughout New Zealand. Before the Ombudsman could determine the extent to which the complaints could be investigated, it was necessary

to establish by whom the decision had been made, that is, whether it was Post Office Bank Ltd, New Zealand Post Ltd or the Government.

The investigation disclosed that when the Government was negotiating the establishment of the two Corporations, reference was made to a management report commissioned in September 1985 which indicated that to be profitable, the number of branches and agencies that were being operated by the Post Office would have to be reduced. The non-essential branches and agencies were identified and were not transferred to the Corporations with the other assets. Instead, the Government paid "subsidies" to cover the costs of operating them. However, at the end of the first year, Cabinet reviewed the situation and decided not to renew the "subsidies" and it was that decision which led to the closures. The Ombudsmen Act does not authorise an Ombudsman to investigate decisions of Cabinet.

At the same time, however, the Ombudsman received a number of requests under the Official Information Act seeking investigation of the responses the requestors had received from the Minister for State Owned Enterprises, Post Office Bank Ltd, and New Zealand Post Ltd to enquiries about how the "subsidies" for the Post Offices facing closure had been calculated. Many had asked for the profit and loss accounts of the relevant Post Offices and had encountered a refusal based on the commercial sensitivity of the information requested, when, in fact, the information did not exist and therefore was not held by the Minister or either of the Corporations concerned.

These complaints were resolved when Post Office Bank Ltd and New Zealand Post Ltd prepared detailed written explanations of the chronology and background to the decisions. As to the complaints received under the Ombudsmen Act, while the Ombudsman had to explain that the decision was not within her jurisdiction, she was nevertheless able to explain how the decision had been made.

On the face of it, all the complaints could have been avoided or diminished in scope had those concerned taken the initiative at an earlier date, consistent with the principle and purposes of the Official Information Act, to make available information explaining the closure decisions. Had such information been available at an earlier stage the Corporations' public relations and public accountability would have been enhanced. In addition, the responsibility for the decision would have been clear so that anyone wishing to challenge it could have made an informed decision as to how to proceed.

These complaints demonstrate the differences in the scope of an Ombudsman's jurisdiction under the Ombudsmen Act and the Official Information and Local Government Official Information and Meetings Acts which can lead to some confusion in the minds of the public. Under the Ombudsmen Act an Ombudsman's jurisdiction to investigate decisions of Ministers of the Crown is limited to the investigation of any advice and/or recommendations made to the Minister by departmental officials. However, decisions of Ministers on requests made to them

under the Official Information Act are subject to the Ombudsmen's jurisdiction. The complaints also highlight the need for the public to know where information they are seeking is held if they are to be able to make effective use of the official information legislation.

There are other differences in the scope of an Ombudsman's jurisdiction. Under the Local Government Official Information and Meetings Act an Ombudsman has jurisdiction to investigate decisions of full Councils, but under the Ombudsmen Act the jurisdiction is limited to the actions, omissions, decisions or recommendations of any committee (other than a committee of the whole), sub-committee, officer, employee or member of a local organisation. Accordingly, while an Ombudsman has the authority under the Local Government Official Information and Meetings Act to investigate a decision of a full Council not to release the minutes of a meeting held "in committee", he or she is not authorised to investigate under the Ombudsmen Act the decision of the full Council to go into committee. Finally, there are a number of organisations which are subject to the Ombudsmen's jurisdiction under the Official Information Act and Local Government Official Information and Meetings Act but not under the Ombudsmen Act, for example, Air New Zealand, Broadcasting Corporation of New Zealand, various producer boards, maritime planning authorities etc. These distinctions are not always understood by members of the public.

4. **Delays**

Section 13(1) of the Ombudsmen Act includes "acts done or omitted" among matters to be investigated by an Ombudsman. Failure to answer queries or deal adequately or in a timely manner with correspondence is a common subject matter of complaints to tnis office; a fortiori it follows that failure to reply adequately to questions put by an Ombudsman during the course of an investigation, or inordinate delays in providing a report or information sought under section 19, are matters which should be viewed with concern. While there are no statutory time limits provided by the Ombudsmen Act, the old adage that "justice delayed is justice denied" must apply to complaints brought under the Act. An unfortunate tendency appears to have arisen in some departments and organisations to use delaying tactics which are strangely reminiscent of the old common law techniques of manoeuvring for extra time. The procedure provided for in the Ombudsmen Act is not an adversarial one and an Ombudsman is not an advocate for the complainant, but is charged with conducting an impartial review of administrative decisions, recommendations, acts and omissions on the basis of information obtained according to sections 18 and 19. The experience of the past year when, to give only one example, six months (and many written and telephoned reminders) after a request for a report, a one and a half page reply without supporting documentation was produced, cannot be allowed to continue.

While the Ombudsmen are fully aware of the research and consideration required to draft some complex reports, and are also sensitive to

other pressures on the time of departmental staff, there needs to be an increase in sensitivity to the effect of delays on the position of complainants, for whom appeal to the Ombudsman is the remedy of last resort. Although time requirements are not imposed in respect of responses to enquiries under the Ombudsmen Act, we intend to take a stronger line in respect of such delays in the future with a view to asking a greater degree of accountability from officials for timely answers. We have already referred to the impact of these delays on the ability to process complaints with sufficient timeliness to avoid a backlog building up, as was the case this year.

ISSUES ARISING FROM INVESTIGATIONS UNDER THE OFFICIAL INFORMATION ACT

1. Extension of Official Information Jurisdiction to Statutory Boards, Education Authorities and Local Government

When the Local Government Official Information and Meetings Act 1987 came into force on 1 March 1988 the implementation of the open government philosophy across the full range of public authorities was completed. This followed the earlier implementation, on 1 April 1987, of the Official Information Amendment Act.

The statutory boards and education authorities attracted a total of 44 reviews during the first year. These concerned a range of issues, including access to medical records. However, most of the difficulties involving information of a medical nature were confined to the release of information to mental patients. The widely expected problems concerning release of medical records generally did not eventuate, and we have been very pleased to note that the implementation of the Act with hospital and area health boards appears to have been widely accepted.

The Local Government Official Information and Meetings Act not only deals with official information held by territorial local authorities but also reforms the procedures for the conduct of meetings of local authorities and statutory boards, especially in respect of exclusion of the public from meetings. The implementation of these procedures is not expected to be without difficulty, and will need to be monitored closely over the coming year.

In addition, some of our discussions with local authority officers around the country have left us with the impression that while they are appreciative of the right of access which now exists in relation to personal information, there is some lack of appreciation of the revolutionary impact of the Act on a wide range of official information, including reports to Council, budgetary items, etc. It remains to be seen how well the Act will be accepted in areas such as this.

The new provisions regarding public notification of meetings of local authorities and the grounds for excluding the public from meetings have generated a number of enquiries to our offices. It is apparent that it will take some time before the new procedures are fully understood.

In general, however, local authorities seem to have been well prepared for the introduction of the Act. An extensive training programme, involving seminars and the production of written materials, was undertaken during the year by the Local Government Training Board. Our staff had some input to this programme and in addition a number of addresses were given to gatherings of local body officers concerning the Act.

2. **Judicial Reviews**

Progress was made during the year in disposing of the two cases awaiting hearing from the previous year.

Following extensive negotiations between the various parties involved in the proceedings concerning release of the Public Service Official Circular and the Public Service Classification List, agreement was reached late in 1987 which enabled the matter to be disposed of. The Public Service Association had obtained an interim injunction in 1984 to prevent disclosure, in accordance with the public duty which had arisen following the recommendation of the then Chief Ombudsman, of the two documents. The issue under the Act centred around the privacy of those public servants whose names and personal details were published in them. As a result of the settlement, the State Services Commission agreed to amend the form in which salary details were published in the weekly Official Circular. Those amendments have now been implemented and the Circular is available to the public on request. The request for the Classification List was withdrawn and we understand the Commission is now considering its future.

The appeal in the "Police Briefs" case (*Commissioner of Police* v *Ombudsman*) was heard in the Court of Appeal on 1, 2 and 3 February 1988 and judgement was still awaited at the end of the reporting year. The judgement is likely to have significant implications for the interpretation of the Act, particularly in the area of pre-trial access by defendants to information on prosecution files. On this subject, however, the Minister of Justice has now indicated that legislation will be introduced in the coming year to implement the report of the Criminal Law Reform Committee on Disclosure in Criminal Cases; this will involve a separate code for pre-trial access to information, administered by the Courts.

3. **Vetoes**

The 1987 amendment changed the procedure for veto of an Ombudsman's recommendation. The previous procedure, involving a ministerial veto, has now been replaced by a procedure for the veto to be applied by an Order-in-Council. Despite a significant increase in the number of formal recommendations made over the previous year (up from 10 to 17) the new procedure has yet to be invoked. The absence of any veto of a recommendation of the Ombudsmen during the year gives a great deal of significance to the veracity and integrity of the review process. It also means that the Ombudsmen are left to determine many difficult issues with very little outside guidance and this imposes an

extraordinary responsibility on the independent discharge of their functions under the Act.

4. **Time Limits**

The 1987 amendment to the Act introduced time limits for responding to requests and also allowed the Ombudsmen to impose time limits for the provision of information to them in the course of their reviews under the Act. These provisions have now been in force for a year and have been monitored closely by the Ombudsmen.

One of the concerns expressed about the Amendment Bill both at the Select Committee and in later debates in the House (which were all bipartisan in nature), was that it would not be desirable for government departments to treat 20 working days as the period within which an application under the Act must be dealt with. During the third reading debate, one member said:

> "The provision of 20 working days must be the absolute maximum, because it would be easy for a government department to specify 20 working days in its manual and for that period to become normal rather than the exception. It should be placed on record that Parliament expects requests for official information that are made to government departments to be treated urgently within a matter of days, not weeks, and that the legislation will again be reviewed if there should be any attempt to make that maximum period of 20 working days normal."

The House of Representatives must be in a position to make this judgement, and accordingly we have decided to make reporting on this aspect a regular feature of our reports to Parliament.

It is our impression that the time limits for making decisions on requests appear to have improved the effectiveness of the Act. Although in general terms they have been well accepted and organisations have attempted where possible to comply with them, the excessive delays and failure to respond to requests, upon which comment was made in last year's report, have not been eliminated. Moreover, despite the amendments to the Act the number of delay complaints is up slightly on last year. Many of these concerned cases where the time limits had been exceeded without any notice of extension being given. Only four complaints were received involving extensions of the time limits in accordance with the Act. The statutory limits now imposed import a need for increased vigilance and the setting of priorities by agencies dealing with requests.

The new time limits for agencies to provide information to the Ombudsmen for review purposes have been largely successful. The increased use of our office by the news media and Members of Parliament over the past year may also reflect increased confidence by those who depend on the Act for speedy access to information, in the ability of the system to deliver effectively.

A total of 334 requirements for information to be provided to the Ombudsmen by agencies were made during the reporting year. Overall, a good measure of co-operation was received from agencies with the result that many investigations were completed quickly. Nevertheless, we were disturbed to note during the year a tendency to respond later rather than sooner. In 50 cases the 20 working day requirement was not observed nor was a formal extension of the time notified. A further 59 responses were not received until the 19th or 20th working day. In other words, some 32% of requests for information to be provided to the Ombudsmen "as soon as reasonably practicable, and in any case no later than 20 working days" were answered on the 19th working day or later.

Allowance must, of course, be made for the workloads and stretched resources of many agencies which find compliance difficult. For government departments, however, responding to official information requests is one of their most important means of achieving accountability with the general public. If a department or organisation is dilatory in responding to an Ombudsman's requirement, we wonder how long a member of the public making a request has to wait. We would hope that official information work could at least be given the same degree of priority as ministerial correspondence.

Section 29A of the Act allows an Ombudsman, in the event of a default, to report to the Prime Minister and thereafter to make such report to the House of Representatives on the matter as he or she thinks fit. There has been no recourse to this power during the reporting year although the Chief Ombudsman has spoken to the Prime Minister about the matter. Nevertheless, we have decided that it would be appropriate to inform the House of the names of those agencies which have failed both to respond to requirements within 20 working days during the year and to notify the Ombudsman of an extension in terms of section 29A. A list is included at page 38 of this report. A list of defaulters will now be presented each year to discharge our responsibilities under section 29A(6) of the Act.

In conclusion, the introduction of time limits, both for making decisions on requests and for complying with Ombudsmen's reviews, appears to have been successful in improving the effectiveness of the Official Information Act. However, the trend towards a 20 working day period for responding to requests and for providing information to the Ombudsmen runs contrary to the expressed expectations of Parliament when the legislation was passed, and must be reversed if it is to comply with that intention.

5. **Compliance with Other Obligations of the Acts: Need for Staff Training**

Quite apart from observing time limits, departments and organisations have a range of obligations under the Official Information Act and the Local Government Official Information and Meetings Act which must be

complied with when requests are being actioned. It is particularly important that those departments and organisations which have a high staff turnover or are newly subject to either Act develop and maintain adequate training for staff.

For example, not all requests are being dealt with in terms of the Act. Under both Acts the reason for refusal, and information about the requestor's right to seek a review by an Ombudsman must be given (section 19 of the Official Information Act and section 18 of the Local Government Official Information and Meetings Act) and the right to seek correction of personal information must also be notified (section 24(3A) of the Official Information Act and section 23(3) of the Local Government Official Information and Meetings Act). Failure to do so may deprive requestors of the various rights they have under the Act in addition to the seeking of access to information.

6. **Ministerial Communications and Cabinet Papers**

The purposes of the Official Information Act reflect an evolutionary approach to open government, involving a progressive increase in the availability of information to promote participation by the people of New Zealand in the making and administration of laws and policies and to promote the accountability of Ministers and officials.

The past year has seen increasing pressure, from news media, special interest groups and others, for access to information held at the very heart of the decision-making machinery of Government. A number of requests were received for reviews of decisions by Ministers and departments not to release Cabinet Committee papers, consultants' reports, and other information which had arisen from the everyday work of Ministers and senior officials in the formulation of policies. In the review of those decisions by us, traditional understandings of constitutional conventions protecting the confidentiality of advice, and the need to protect exchange of opinions as part of the policy formation process, have been positively challenged as to their validity within the open government philosophy exemplified by the information legislation. We know that this has presented difficult considerations for Ministers and senior officials but we have been surprised and pleased at the extent to which they have been prepared to accept Ombudsmen's conclusions on release of information even when difficult political factors have been present.

By way of example, it is worth summarising the issues which arose in three particular cases.

The first involved requests for access to information about university funding. A number of papers were submitted by different Ministers to a Cabinet Committee on this subject. Following the decision not to approve an increase in funding in the immediate term, the Minister of Education published a news release containing the details of the proposal and the reasons for rejecting it. Subsequent requests for the actual papers were refused and there was reference to the constitutional convention protecting the confidentiality of advice in such circumstances

(section 9(2)(f)(iv)). However, a preliminary opinion was formed that good reason did not exist to withhold the reports since the nature of the proposals they contained was a matter of public knowledge and the supporting arguments had previously been publicised. This view was accepted and the reports were made available.

The second case also involved a paper submitted to a Cabinet Committee by a Minister. The matter in question was connected with the closure of geothermal bores in Rotorua. The requestors' objective in seeking information was to find out what scientific advice had been given to the Cabinet Committee when it decided not to allow licences to be issued for a particular category of bore. This was a matter of considerable sensitivity and public interest, and it was accepted that, although the paper in question contained information of a scientific nature, release of the paper itself would undermine the principle of collective Cabinet responsibility. The matter was resolved, to the partial satisfaction of the requestors, when a separate written summary of all the scientific advice given to the Government on the bore closure issue was made available.

The third example involved communications between two Ministers about the terms of reference for a departmental review. This was a matter which had not gone to Cabinet and so collective Cabinet responsibility was not in issue. Included in the information requested were written communications between the two Ministers, and notes and memoranda of meetings between each Minister and his respective staff at which the proposed review had been discussed. The argument advanced under section 9(2)(g)(i) of the Act was that release of the information, which showed a difference of opinion between Ministers at the policy formation stage, would inhibit such discussion between Ministers from occurring in future, particularly with officials present. In the circumstances it was not accepted this would be so, and a recommendation was made that the information be released.

The latter case raised important questions about whether the purposes of the Act, and the process of open government, are furthered by Ministers being seen by the public to debate issues at the policy formation stage. There is a tendency, which perhaps arises from the adversarial nature of the political system, to regard such differences of opinion in a negative light. In our view, however, expressions and differences of opinion in the presence of officials by Ministers with an obligation to their portfolio responsibilities, are a normal part of the governmental process and should not be unexpected by the public. Moreover, the public interest can be and often is promoted by Ministers being seen to debate issues. Ministers' portfolio responsibilities embrace well defined objectives particular to each portfolio. To suggest that as between Ministers these objectives will always coincide is unrealistic; differences and their implications must always be talked through before final decisions are taken. That factor is very much in the public interest and it may well help arrive at a better decision if the public are aware of the issues being debated and are able to contribute

to the debate before a matter is finally settled in a Cabinet Committee or Cabinet forum. Collective Cabinet responsibility is not affected in these circumstances because binding decisions have not at that stage been made. In our understanding, the protection of Ministerial opinions in the policy formation stage will be necessary only where discussion is involved on an issue which, if made public, would have a prejudicial implication for the conduct of public affairs: for example, in fiscal policy debates prior to budget announcements, or in arriving at a negotiating position for government in a commercially sensitive agreement.

7. **Consultants' Reports**

A related issue which arose during the year was whether a report prepared by an independent consultant could be "advice tendered by Ministers of the Crown and officials" and therefore subject to the constitutional convention which may protect the confidentiality of such advice in such circumstances. An opinion was formed in the case in question that section 9(2)(f)(iv) of the Official Information Act does not apply to an independent consultant's report which has not been specifically adopted by the department when presenting it to the Minister. This approach drew substantially on a decision of the Supreme Court of Victoria where it had been held that independent expert advice unless specifically adopted by a Minister could not be described as "a document that has been prepared by a Minister".

This view on the availability of consultants' reports will come increasingly into focus in the future as Ministers and central and local government organisations place greater reliance on technical and professional reports from outside sources as a means of determining all the facts to be taken into account in the decision making process. Such reports, if made available before final decisions are taken, can make a material contribution to open government, enabling those affected to form their views on the issues and communicate those views to the decision makers before the event. The decision makers will then have on hand advice and opinions not wholly arising from official sources.

As a postscript it needs to be said that consultants' reports (or parts of them) may need to be withheld on commercial or other similar grounds. Also, where officials have advised Ministers on the contents of such reports, their advice and opinions may need to be protected at least at the pre-decision stage.

8. **Tender Prices**

In a recent investigation a requestor sought disclosure by the Government Stores Board of the successful tender prices for a national period supply contract for a certain item. After a long investigation, in which the provisions of the Official Information Act before and after 1 April 1987 were considered and comments were sought from the successful tenderer, it was concluded that the predicted effects of disclosure (such as prejudice to the ability of the Government Stores Board to attract the lowest possible prices) were not so likely to occur that it was necessary

to withhold the information at issue. The recommendation was accepted, and the information was made available.

However, it was subsequently noted that on 26 November 1987 the Minister of Finance said (in reply to a question by Mr D Graham, MP for Remuera) about the Government Stores Board policy:

> "The Board's policy is not to make public the successful tender price on tenders received for Government supply contracts. The reasons for that policy are: the practice of non-disclosure is widely accepted by the business community in the expectation that, if successful, their prices and other information will be treated in confidence; the Board's competitive commercial operation would be at risk if normal commercial confidentially [sic] could not be maintained; an agreement for independent review by the Manufacturers Federation provides an independent check that ensures that 'public interest' and public accountability issues are properly served; and public notification of contract prices would impose an unacceptable additional cost to supply administration."

In light of the earlier investigation and resulting recommendation, it should be emphasised that any policy the Board may adopt in respect of publication of successful tender prices must be viewed subject to the operation of the Official Information and Local Government Official Information and Meetings Acts. This requires each request under either Act to be considered on its merits. If there is no good reason under the Act for withholding the price of an accepted tender then, notwithstanding any Government Stores Board policy statements to the contrary, that information should be disclosed consistent with the principle of availability. This will in most cases involve balancing any countervailing public interest considerations against the need to withhold the information on commercial grounds. In the context of requests for successful tender prices, the public interest favouring release of the information will involve questions of accountability, for example, that government purchasing procedures should be seen to be beyond reproach, and that the public has a right to know how the Government spends public funds. In some cases these public interest considerations will be met only through disclosure of successful tender prices themselves.

On a general level, we consider that disclosure of both unsuccessful and successful tenderers and their prices is in the public interest. Throughout the world the public administration of tenders and contracts appears to present the most fertile ground for corruption. New Zealand itself has had unfortunate incidents in this respect. Publication of tenderers, tender prices and choice of successful tenderer opens the decisions of officials to public scrutiny and question and substantiates the integrity of the tendering process. It is done without disclosing how the tender prices are calculated and therefore protects competitive commercial practices of firms tendering for official contracts. If all prospective tenderers are told, in the documents inviting tenders, that this degree of publication will take place there can be no argument about it

later. There has been no conclusive evidence presented in the context of investigations under the Official Information Act that disclosure of tender prices will invariably lead to less competitive contract prices to Government for its work.

In our view, given the general desire of tenderers to obtain access to secure and reliable government and local government contracts, disclosure of tender prices may well enhance Government's ability to obtain competitive contract prices.

9. **Examples of information made available as a result of the investigation and review process**

- Reception order and accompanying medical certificates in respect of the requestor's admission to a mental hospital.
- Police report on enquiries made as a result of the requestor's nomination for appointment as a Justice of the Peace.
- Abridged copies of reports by the Lotto Evaluation Committee on the introduction of lotto in New Zealand.
- Consultants' report on the valuation of the assets to be transferred to Electricorp.
- Selected information held in Ministry of Defence archives about New Zealand Army soldiers executed during World War I.
- Information explaining why the requestor had been classified as a "protected teacher".
- A copy of the Cockpit Voice Recording taken from the Air New Zealand aeroplane which crashed at Mt Erebus.

INFORMATION AUTHORITY

By the time this report is presented, the Official Information Act will have been in force for five years. 30 June 1988 sees the demise of the Information Authority under the "sunset clause" inserted in the legislation.

In the course of its existence the Authority has played an invaluable role in overseeing the implementation of open government both at central and, more recently, at local level. Its role in monitoring the success of the legislation in practice has been vital and will be sorely missed in future. If there is one lesson from the Authority's existence, it is that the process of open government cannot succeed on an on-going basis without some form of continuing official oversight at a policy level. It is not appropriate for the Ombudsmen to have that role; we would accordingly express the hope that the Authority's monitoring functions will be assumed by some other body.

Tribute is due to the Authority's Chairman, Sir Alan Danks, the members and staff for the important contributions they have made to ensuring that the ideal of open government has become a reality.

PRIVACY

The year saw initiatives on two fronts in the area of protection of personal privacy: the Information Authority's recommendations for further amendment to the Official Information Act to enact rules governing the collection, use and storage of personal information; and the publication by the Department of Justice of an Options Paper on the protection of data privacy.

We made submissions on both documents. The whole area of privacy protection is highly complex, and the difficulties in achieving reform should not be underestimated. At this stage we favour the implementation of the Information Authority's proposals, which will ensure that proper practices are applied in the government sector to the collection and use of personal information. Such moves, if successful, would lay the foundation for similar principles to be extended to the private sector.

PUBLICITY AND PUBLIC AWARENESS PROGRAMMES

1. Visits to Other Centres

Investigating officers spent two days in New Plymouth, making half day visits to Waitara and Inglewood; two days in Stratford with half day visits to Eltham and Hawera; two days in Invercargill and Gore; three days visiting Ashburton, Timaru and Oamaru and two days in Dunedin for the specific purpose of holding "clinics". "Clinics" are designed to enable people living outside the three main centres to have immediate access to the office to discuss with investigating officers grievances they have arising from their dealings with central, regional and local government. Where appropriate, the investigating officers will take complaints for investigation. In other cases they will suggest alternative remedies which the person concerned should pursue. These visits are advertised in advance in the local papers, on the radio and, where possible, through the local Citizens Advice Bureaux. Experience has shown this to be an effective means not only of increasing people's knowledge about the office but also in assisting them to overcome reservations they frequently have about writing to the Ombudsmen about their complaints. Some 200 people contacted the investigating officers in the course of the above visits and most of them were interviewed, although some discussed their complaints with the investigating officers over the telephone.

In addition, investigating officers were interviewed by the local press and addressed local Citizens Advice Bureaux. We believe that the response to the clinics demonstrates the validity of the programme and the need to ensure that the office is readily accessible to all citizens.

In addition to the specific programme of clinics, investigating officers also made a number of field trips to visit complainants and organisations in relation to the investigation of particular complaints. For example, visits were made to the West Coast, the Nelson/Blenheim area, Tokoroa and Tauranga to name but a few. Where such a visit is being made, the investigating officer concerned always takes the opportunity to undertake any other visits in the area which would not of themselves justify a

specific visit, but where an interview with a complainant or an organisation would be helpful to the investigation. If time permits, the investigating officer will also take the opportunity of a field trip to call at the local Citizens Advice Bureau and talk to the staff and make sure that they have supplies of posters and pamphlets.

Regular contact is maintained by correspondence and through visits with all Citizens Advice Bureaux throughout the country. The Bureaux are used by many people as a source of advice and guidance and the workers frequently refer people to the Ombudsmen.

As with all visits and publicity, the extent to which the office can pursue such initiatives is dependent upon resources, both financial and staff. It also has to have regard to the existing workload of the office. However, we hope to be able to continue and develop these programmes in the coming year.

2. **Visits by the Ombudsmen**

We continued our calls on local authorities and statutory boards as a means of keeping contact with elected officials and Chief Executives. In the course of these visits we invariably made ourselves available to the local media for interview to talk about the role and functions of the office. We also made ourselves known to the Chairmen, Boards and Chief Executives of the new State-owned enterprises to explain to them the role and functions of the office with which many were quite unfamiliar. As in the past we continued to give radio interviews and participated in talkbacks. We have also undertaken a large number of speaking engagements for groups and organisations throughout the country. This is a worthwhile, albeit time consuming, means of ensuring that people within the community are kept abreast of developments in the role and functions of the Ombudsmen.

3. **Meeting the Maori Community**

The investigating officer appointed to the staff to assist us with this programme spent the first few months familiarising himself with the basic work of an investigating officer which was essential before he assumed his special duties. However, he did participate in a series of "clinics" held in South Auckland. In August he attended a workshop of Maori lawyers and law students in Wellington to talk to them about the role of the Ombudsmen and to encourage them to use the office. At the end of the reporting year he was planning a visit for the Ombudsman to meet with Maori people in the far North. The Ombudsmen rely a great deal on his advice when dealing with Maori issues.

4. **Meeting the Pacific Island Community**

Last year's programme aimed at raising the awareness of the Pacific Island community to the functions of Ombudsmen continued in the year under review. A further series of "clinics" were held in South Auckland to maintain the contacts established in late 1986. Investigating officers attended the Pacific Islands Educational Resource Centre, the

Papakura, Pakuranga and Mangere Citizens Advice Bureaux, the Manukau City shopping centre, the Mangere Library, the Otara Maori Wardens Office and the Otara Fleamarket. The initiative generated many enquiries and a number of specific complaints for investigation.

5. **Law Week**

The Wellington District Law Society organised Law Week from 27 April to 2 May 1987, the purpose of which was to promote awareness and understanding of the law and its processes. The office accepted an invitation to participate and was represented at many of the information desks established at shopping malls throughout the district. Staff members with other language skills also attended the special sessions arranged for those who do not speak English as a first language.

One of the highlights of the week was the Lester Castle Memorial Lecture delivered by Sir David Beattie in which he spoke about the changing role and functions of the Ombudsmen, paying tribute to the particular contribution made by the late Lester Castle to the development of the role.

OVERSEAS VISITS

In his capacity as a member of the International Ombudsman Consultative Committee, the Chief Ombudsman attended a meeting of the Committee in Edmonton, Alberta, Canada in May 1987. The purpose of the meeting was to organise the theme and plan the agenda for the 4th International Ombudsman Conference to be held in Canberra, Australia in October 1988. The Chief Ombudsman was also invited to attend meetings of the Board of Directors of the International Ombudsman Institute which took place immediately before the Committee meeting. This provided him with a valuable opportunity to confer with colleagues from throughout the world and to learn, at first hand, how the institution of Ombudsman operates in very different political, social, ethnic and economic environments.

OVERSEAS VISITORS

The office received a delegation from the Community Relations Department of the Kanagawa Prefecture, Yokohama, who were interested in learning about the role and functions of the Ombudsmen in local government. Mr Apisai Ielemia, Clerk of Parliament in Tuvalu also visited the office to discuss the role and functions of the Ombudsmen. His Honour Judge Rowlands of the Administrative Appeals Tribunal, Victoria, visited to discuss the Official Information Act.

FUNDING

A table summarising the amount appropriated to the office and the amount spent in the 1987/88 financial year appears at p. 39 and shows that the office overspent its budget by $18,000. It was predicted in September 1987 that the amount appropriated for the year would be insufficient to cover anticipated expenditure. In the first five months of the

reporting year there had been a 10% increase in the intake of complaints. In addition, the office was endeavouring to increase its activities in relation to the Maori and Pacific Island communities. This would entail travel costs which could not be met from the existing funds. Accordingly, additional financial provision was sought under the supplementary estimates to cover the expected deficiency.

The additional funding was denied, unless the "Minister", who in the case of our office for funding purposes is the Speaker, could provide funds from elsewhere within the Vote. Had it been possible to find the additional amount sought from elsewhere within Vote: Office of the Ombudsman, it would not have been necessary to ask for additional funds. In the event, despite every effort to minimise expenditure by cancelling programmed clinics in parts of the country overdue for visits, and ensuring that all travel was not merely highly desirable but essential, overexpenditure was inevitable. The Ombudsmen cannot control the level of their workload. Their functions are determined by Parliament and they are "demand driven". Given the high percentage increase in work for all jurisdictions over the reporting year, it took careful budgeting and quite considerable penalty on complainants to ensure that the overexpenditure was not greater. For instance, many complainants, including Members of Parliament, assume that we have fax facilities. In fact we have neither those nor adequate word processing, and this impinges significantly on the efficiency of the office.

The experience this year highlights the problems adverted to by the late Lester Castle at p. 7 of his report to Parliament for the year ended 31 March 1986. We fully endorse the principles he enunciated in that report as being of paramount importance in the budget approval system for the office, that is:

> "the process has to be sympathetic to and perceptive of the special resource needs of the office, and it should not, as far as possible, either in appearance or in fact, give the opportunity or potential for executive government either at ministerial or at official level to deny resources unreasonably thereby detrimentally affecting the operations of the office, its status and its functions."

In principle, the Ombudsmen, being accountable to Parliament, should seek their funding directly from Parliament.

This concept was drawn to the attention of the House of Representatives by the Government Administration Committee in its report on Vote: Office of the Ombudsman for the 1987/88 financial year in which it referred specifically to the budgetary procedures for the office.

We are currently pursuing this proposal and hope to report a satisfactory outcome to the issue next year.

STAFF

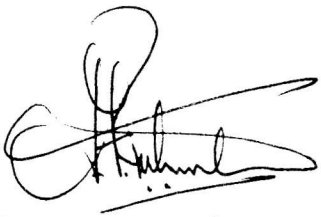
In view of the anticipated increase in the workload, provision was made last year for the appointment of two additional investigating

officers. One of those appointments was made to the Christchurch office in June 1987. The workload already being carried by the two investigating staff in that office was high. In addition, the investigation of complaints under the Official Information Act involving area health and hospital boards and education authorities in the South Island had to be undertaken in Christchurch where complaints under the Ombudsmen Act relating to those organisations are also dealt with. The result of this appointment means that there are now three investigating officers in Christchurch and three in Auckland. Each investigating officer has a major case load which equates to 40 to 45 investigations on hand at any one time. Having regard to these workloads that level of staffing is coping in the meantime, but with the additional cases likely to be generated under the Official Information Amendment Act and the Local Government Official Information and Meetings Act, more assistance may be necessary. In anticipation that the Local Government Official Information and Meetings Act will cause further workloads we are extremely grateful to the Deputy Prime Minister for his considerate approval to the appointment of two more investigating officers and an administrative assistant should this occur. The Chief Ombudsman has for his part guaranteed that no appointment will be made to any of those positions until the demand ensures that the appointee will have a significant workload to undertake.

In March 1988 an appointment was made to the second position approved last year and that appointment was to the staff of the official information section in the Wellington office. The appointment was necessary because there had been a substantial increase in the workload experienced in that section during the year, and the impact of the Local Government Official Information and Meetings Act on the southern half of the North Island which is administered from Wellington would increase the load to an unreasonable level. The policy, planning and supervision of all investigations throughout New Zealand under the official information legislation are also undertaken by the senior investigating officers based in Wellington and this limits to a certain extent their ability to handle effectively a high caseload. The new appointee will afford some relief to those two hardworking officers.

The Auckland office went through a particularly difficult period during the reporting year. An appointment was made in May to the position of Senior Investigating Officer, left vacant following the death of John Hudson, but the appointee was unable to take up his duties until August. In April one of the two investigating officers resigned her position, and although it was possible to fill that position promptly, it placed a very heavy burden on the shoulders of the remaining investigating officer, Ted Burrows. It was indeed fortunate that he had been on the staff of the Auckland office for over ten years and was a capable and experienced officer, and we wish to record our gratitude to him for carrying that office through a difficult time. He retired in January and we wish him well in his new career as a referee with the Small Claims Tribunal.

As a result of the foregoing there has been a 100% turnover in the investigating staff in the Auckland office in the course of the reporting year. Staff in the other two offices has remained relatively stable. Once again we pay tribute to a truly dedicated, highly skilled and motivated staff. We are very proud of their achievements and wish to assure the public that these are the people who make a significant contribution to the solution of their problems.



JOHN ROBERTSON, C.B.E. CHIEF OMBUDSMAN.

NADJA TOLLEMACHE, OMBUDSMAN.

OMBUDSMEN ACT 1975

STATISTICAL ANALYSIS

INVESTIGATIONS FOR THE YEAR 1 APRIL 1987—31 MARCH 1988

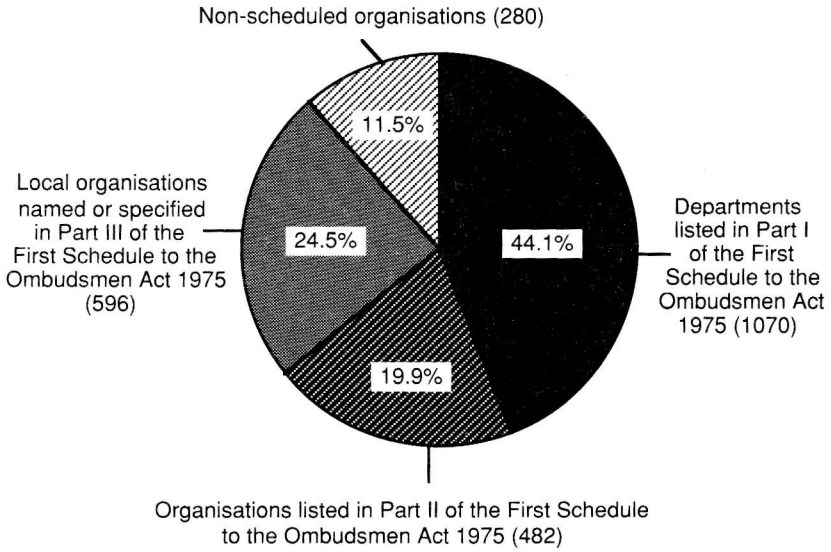
Table 1

Summary

Complaints received during the year	2 030
Complaints carried forward from the previous year ..	398
TOTAL	2 428

Table 2

DISTRIBUTION OF COMPLAINTS



TOTAL	2 428

Table 3

DISPOSITION OF COMPLAINTS

TOTAL	..	..	..	..	2 428

Table 4

	Part I	*Part II*	*Part III*	*No Juris-diction*	*Total*
Resolved by organisation ..	74	51	62		187
Sustained—no recommendation made	24	7	15		46
Sustained—recommendation made	16	7	9		32
Not sustained	111	73	135		319
Discontinued	37	14	36		87
Declined	205	109	69	274	657
Formal investigation not undertaken	372	86	83		541
On hand	231	135	187	6	559
TOTAL	1 070	482	596	280	2 428

OFFICIAL INFORMATION ACT 1982 & LOCAL GOVERNMENT OFFICIAL INFORMATION & MEETINGS ACT 1987

STATISTICAL ANALYSIS

INVESTIGATIONS AND REVIEWS FOR THE PERIOD 1 APRIL 1987—31 MARCH 1988

Table 1

Requests on hand at 1 April 1987	80
Requests received during the year	451
Additional grounds and reopened requests	31
Total under review	562

Table 2

DISPOSITION OF INVESTIGATIONS AND REVIEWS

TOTAL	562

Table 3

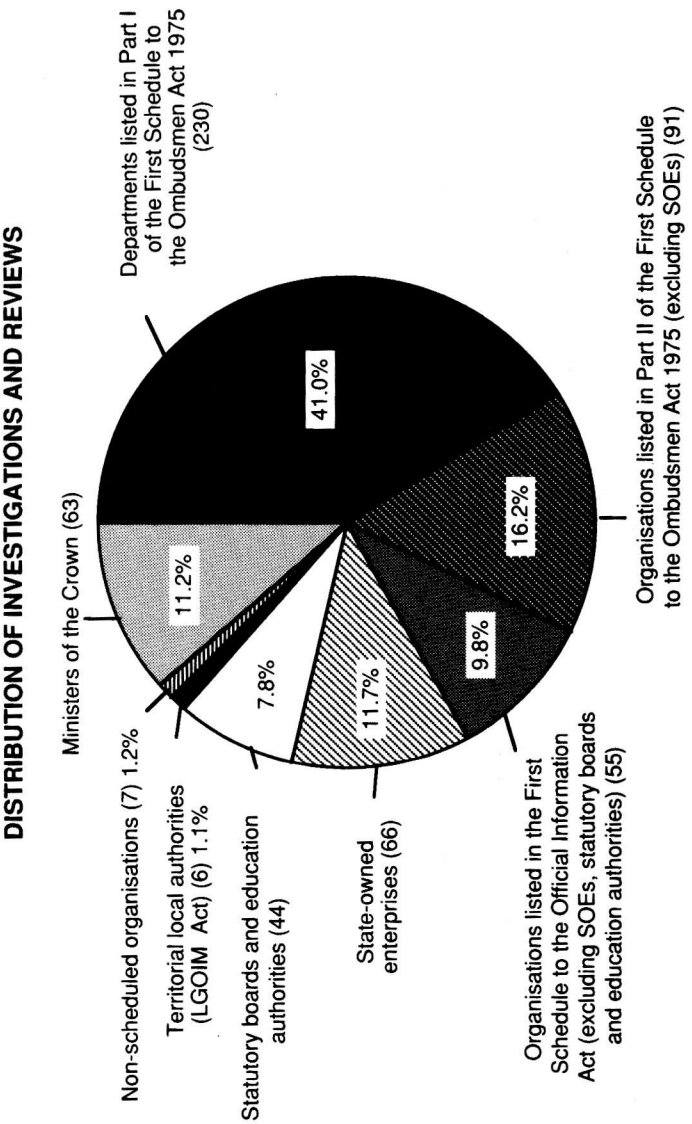

DISTRIBUTION OF INVESTIGATIONS AND REVIEWS
Departments listed in Part I of the First Schedule to the Ombudsmen Act 1975 (230)
41.0%
Organisations listed in Part II of the First Schedule to the Ombudsmen Act 1975 (excluding SOEs) (91)
16.2%
Organisations listed in the First Schedule to the Official Information Act (excluding SOEs, statutory boards and education authorities) (55)
9.8%
State-owned enterprises (66)
11.7%
Statutory boards and education authorities (44)
7.8%
Territorial local authorities (LGOIM Act) (6) 1.1%
Non-scheduled organisations (7) 1.2%
Ministers of the Crown (63)
11.2%

Table 4

OFFICIAL INFORMATION ACT 1982
SECTION 29A REQUIREMENTS

List of Defaulters

The following list includes all agencies whose responses to requirements imposed under section 29A were received in the office on the 21st working day or later and who had failed to give the required notice in terms of subsection (4).

Agriculture and Fisheries
Air New Zealand
Auckland Hospital Board
Auckland Technical Institute
Broadcasting Corporation
Crown Law Office
Customs
Defence
DFC (NZ) Ltd
Education
Energy
Forestry Corporation
Health (Minister of)
Internal Affairs (Minister of)
Justice
Labour
Police
Police (Minister of)
Pompallier College
Trade and Industry (Minister of)
University of Canterbury
Works and Development
Works and Development (Minister of)

Table 5

Nature of Decisions Complained of

Refusals	414
Delays	96
Corrections	7
Deletions	17
Charges	20
Transfers	4
Extension	4
	562

Table 6

Nature of Requestors—(Requests received in reporting year)

Media	*Individuals*	*Members of Parliament*	*Special Interest Groups*	*Companies and Incorporated Societies*
63	*256*	*22*	*61*	*49*

VOTE: OFFICE OF THE OMBUDSMAN

Expenditure 1 April 1987—31 March 1988

A summary of the amount appropriated and the amount spent in the 1987-88 financial year is set out below:

	Appropriated $(000)	*1987-88 Spent $(000)*	*1986-87 Spent $(000)*
Personnel	1 150	1 119	962
Operating costs	352	403	256
Capital	19	19	33
GST	151	149	47
TOTAL	1 672	1 690	1 298

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